

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

SEP 26 2012

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF ARKANSAS
EASTERN DIVISION

JAMES W. McCORMACK, CLERK
By: SPW DEP CLERK

KIMBERLY EPPS,

Plaintiff,

v.

FRED'S STORES OF
TENNESSEE, INC.

Defendant.

No. 2:12-cv-193 KGB

This case assigned to District Judge Baker
and to Magistrate Judge Young

DEFENDANT'S NOTICE OF REMOVAL

Defendant Fred's Stores of Tennessee, Inc., pursuant to 28 U.S.C. §§ 1331, 1441 and 1446, hereby removes this action from the Circuit Court of Cross County, Arkansas to the United States District Court for the Eastern District of Arkansas, Eastern Division. In support of removal Defendant states:

1. Plaintiff, Kimberly Epps, commenced this civil action in the Circuit Court of Cross County on August 20, 2012 by filing a Complaint against Defendant alleging that it violated the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*, and the Arkansas Minimum Wage Act, A.C.A. 11-4-201 *et seq.* The Complaint was served upon Defendant on August 27, 2012. (See Summons and Complaint attached hereto at *Exhibit A*).

2. This Notice of Removal is being filed in the United States District Court for the district and division within which the action is currently pending. This Notice of Removal is being filed within thirty (30) days after Defendant's receipt of a copy of the Complaint, and is therefore timely filed under 28 U.S.C. § 1446(b).

3. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings, and orders served on Defendant are attached hereto as composite *Exhibit A*.

4. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice will be served on Plaintiff, the only adverse party, and a Notice will also be filed with the Circuit Court of Cross County, Arkansas, a copy of which is attached hereto as *Exhibit B*.

Federal Question Jurisdiction

6. This action is properly removable to federal court because Plaintiff's Complaint presents federal questions pursuant to 28 U.S.C. § 1331 inasmuch as Plaintiff alleges violations of federal statutes, viz., the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.*

7. Removal is therefore appropriate pursuant to 28 U.S.C. § 1441.

WHEREFORE, on the basis of the foregoing, Defendant respectfully submits that removal of this action from the Circuit Court of Pulaski County, Arkansas to this Court is proper.

Respectfully submitted,

By: 

Louis P. Britt IN Tenn. #5613
David A. Prather Tenn. #99389
J. Dylan King Tenn. #28179

FORD & HARRISON LLP
795 Ridge Lake Boulevard, Suite 300
Memphis, Tennessee 38120
Telephone: (901) 291-1500
Telefax: (901) 291-1501
lbritt@fordharrison.com
dprather@fordharrison.com
dking@fordharrison.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Removal has been served via U.S.

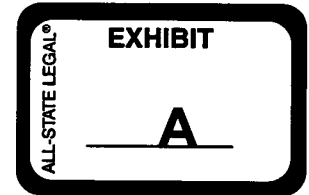
Mail, postage prepaid this 25th day of September, 2012, upon:

Luther Oneal Sutter, Esquire
Sutter & Gilham
210 West Conway Street
Benton, AR 72015
501-224-1050 (tel)



J. Dylan King

MEMPHIS:219170.1



IN THE CIRCUIT COURT OF CROSS COUNTY, ARKANSAS

KIMBERLY EPPS, on behalf of
herself and all others similarly
situated

PLAINTIFF

VS.

CASE NO: 19CV-12-95-1

FRED'S STORES OF
TENNESSEE, INC.

DEFENDANTS

COMPLAINT-CLASS ACTION

COMES the Plaintiff, on behalf of herself and all others similarly situated, by and through counsel, Sutter & Gillham, PLLC, and for her Complaint, she states:

PARTIES AND JURISDICTION

1. Plaintiff is a resident citizen of Cross County Arkansas, who worked for the Defendant, a corporation with places of business across Arkansas, as a non-exempt employee. This is an action brought to recover wages under the Fair Labor Standards Act (FLSA) and the Arkansas Minimum Wage Act (AMWA). Accordingly this court has subject matter jurisdiction. Since Plaintiff was a resident at the time of the acts given rise to this action, venue is proper.

GENERAL ALLEGATIONS OF FACT

2. Plaintiff worked for the Defendant as a non-exempt employee.
3. When she was employed by the Defendant, Plaintiff was instructed to work off the clock in March 2012.
4. Plaintiff complained to Plaintiff's manager about being asked to work off of the clock, but nothing was done.
5. Plaintiff was not paid for the time she actually worked.
6. Plaintiff again complained of this practice working off the clock in April 2012, shortly before Plaintiff was terminated in April 2012.
7. Plaintiff was terminated under circumstances similarly situated persons who had not invoked their rights under the FLSA were not terminated.

FILED - RHONDA SULLIVAN
CLERK AND EX-OFFICIO RECORDER

AUG 20 2012

COUNT I - CLASS

8. Plaintiff re-alleges the foregoing as it is fully set out herein.

9. At all times relevant, Defendant employed more than twenty (20) people during each week in 2009, 2010, 2011, and 2012 in an industry affecting interstate commerce. Defendant is an employer, subject to the FLSA and the AMWA. The Class consists of all employees who performed the same job duties as Plaintiff, numbering in the hundreds, who have worked off the clock within the two years preceding the filing of this Complaint within the United States of America for the Defendant, but who have not received compensation. Plaintiff's claims are typical of the Class and share a common nucleus of fact, i.e. Defendant's failure to compensate employees who work off the clock according to a uniform practice. Plaintiff and his counsel are competent to represent the Class.

10. Plaintiff was a non-exempt employee, as that term is defined by the FLSA and the AMWA.

11. However, Defendant did not pay the Plaintiff for the hours he worked within the three years preceding the filing of this lawsuit. Accordingly, Defendant's actions have violated the FLSA, Arkansas state law, the AMWA and constitute a breach of contract. Plaintiff therefore seeks appropriate damages for lost wages, lost overtime, and liquidated damages, unless the Defendant can show its actions were in good faith.

COUNT II

12. Plaintiff re-alleges the foregoing as fully set out herein.

13. Plaintiff was terminated in retaliation for invoking her rights under the FLSA and complaining of violations of the FLSA. Indeed, Defendant's actions were willful. In March and April of 2012, Plaintiff objected to the practice. Nonetheless, the Defendant took no corrective action. In fact, to the contrary, Defendant decided to further violate the law again and retaliate against Plaintiff. Thus, Plaintiff was terminated not only for engaging in protective activity, but also opposing illegal activity.

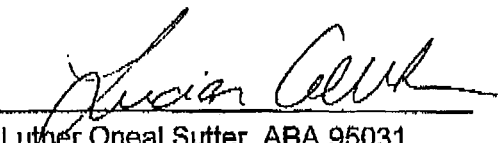
14. Defendant's actions have been willful.

Wherefore, Plaintiff prays for appropriate compensatory and liquidated damages, for a trial by jury, for reasonable attorney fees, for cost, for reinstatement or front pay, for an injunction requiring the Defendant to implement the FLSA in a lawful manner, for an Order certifying the Class, for an injunction requiring the Defendant to cease retaliation, and for all of the proper relief.

Respectfully submitted,

SUTTER & GILLHAM, P.L.L.C.
Attorneys at Law
P. O. Box 2012
Benton, Arkansas 72018
(501) 315-1910 FAX 501-315-1916
Attorneys for the Plaintiff

By:


Luther Oneal Sutter, ABA 95031
Luthersutter.law@gmail.com

SUTTER & GILLHAM, P.L.L.C.

ATTORNEYS AT LAW

MAILING ADDRESS: P.O. BOX 2012, BENTON, AR 72018

PHYSICAL ADDRESS: 310 WEST CONWAY STREET, BENTON, AR 72015

TELEPHONE 501-315-1910 FACSIMILE 501-315-1916

LUTHER ONEAL SUTTER, P.A.

JAMES M. SCURLOCK

LUCIEN R. GILLHAM, P.A.

August 17, 2012

Rhonda Sullivan
Cross County Circuit Court Clerk
705 E. Union Street
Wynne, Arkansas 72396

**RE: Kimberly Epps, on behalf of herself and all others similarly situated v. Fred's
Stores of Tennessee, Inc.**

Dear Ms. Sullivan:

For an original filing in your Court, I have enclosed the original copy of Complaint, along with Civil Cover Sheet and Summons. Our firm's check in the amount of \$165.00 is also enclosed for payment of the filing fee.

Please do not hesitate to call with any questions you may have regarding these enclosures. Thank you for your attention and assistance.

Sincerely,



Cindy Butts
Attorney's Assistant

Enclosure(s)

08/23/2012 13:56

870-238-5722

CC CIRCUIT CLERK

PAGE 06/06

IN THE CIRCUIT COURT OF CROSS COUNTY, ARKANSAS

KIMBERLY EPPS, on behalf of herself
and all others similarly situated

PLAINTIFF

VS.

CASE NO: 19CV-12-95-1

FRED'S STORES OF TENNESSEE, INC.

DEFENDANTS

PLAINTIFF'S ATTORNEY: Sutter & Gillham, P.L.L.C.
ADDRESS: P.O. Box 2012
Benton, AR 72018

THE STATE OF ARKANSAS TO DEFENDANT:

Fred's Stores of Tennessee, Inc.
AFS: The Corporation Company
124 West Capitol Ave., Suite 1900
Little Rock, AR 72201

SUMMONS

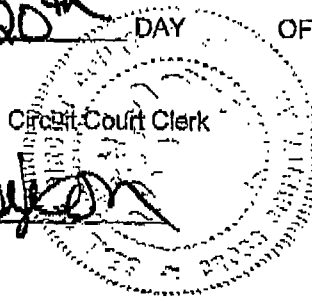
NOTICE OF LAWSUIT

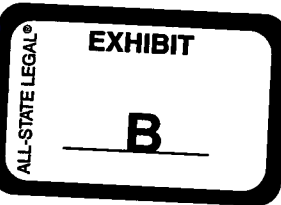
1. You are hereby notified that a lawsuit has been filed against you; the relief asked is stated in the attached complaint.
2. The attached complaint will be considered admitted by you and a judgment by default may be entered against you for the relief asked in the complaint unless you file a written answer or a motion under Rule 12 of the Arkansas Rules of Civil Procedure and thereafter appear and present your defense. Your pleading or answer must meet the following requirements:
 - A. It must be in writing, and otherwise comply with the Arkansas Rules of Civil Procedure.
 - B. It must be filed in the court clerk's office within 30 days from the day you were served with this summons.
3. If you desire to be represented by an attorney you should immediately contact your attorney so that a response can be filed for you within the time allowed.
4. Additional Notices: None

WITNESS MY HAND, AND SEAL OF THE COURT ON THIS, THE 20th DAY OF August 2012.

Address of Clerk's Office:
Cross County Circuit Court Clerk
705 E. Union Street
Wynne, Arkansas 72396

RHONDA SULLIVAN, Circuit Court Clerk

BY: Deputy Clerk: 



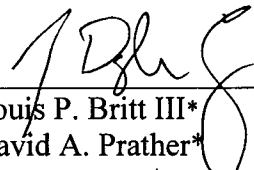
IN THE CIRCUIT COURT OF CROSS COUNTY, ARKANSAS

| | | |
|------------------|---|------------------|
| KIMBERLY EPPS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. 19CV-12-95-1 |
| |) | |
| FRED'S STORES OF |) | |
| TENNESSEE, INC. |) | |
| |) | |
| Defendant. |) | |

NOTICE OF FILING NOTICE OF REMOVAL

Please take notice that Defendant, Fred's Stores of Tennessee, Inc., has filed with the Clerk of the United States District Court for the Eastern District of Arkansas, a Notice of Removal of the above-captioned action. Pursuant to 28 U.S.C. § 1446(d), Defendant files herewith a true copy of the Notice of Removal previously filed in the United States District Court for the Eastern District of Arkansas.

Respectfully submitted,



 Louis P. Britt III* Tenn. #5612
 David A. Prather* Tenn. #99389
 J. Dylan King* Tenn. # 28179
 Ford & Harrison LLP
 795 Ridge Lake Boulevard, Suite 300
 Memphis, TN 38120
 Telephone: 901-291-1516
 Facsimile: 901-291-1501
 Email: lbritt@fordharrison.com
 Email: dking@fordharrison.com

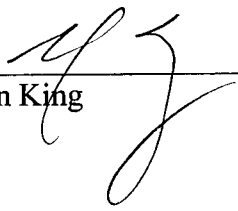
**COUNSEL FOR DEFENDANT
FRED'S STORES OF TENNESSEE, INC.**

* Admitted to United States District Court for Eastern and Western Districts of Arkansas.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Notice of Notice of Removal has been served
via Standard U.S. Mail, this the 25 th day of September, 2012, upon:

Luther Oneal Sutter, Esquire
Sutter & Gilham
210 West Conway Street
Benton, AR 72015
501-224-1050 (tel)



J. Dylan King

MEMPHIS:219169.1